ATTACHMENT D
Comment Letters Received in December 2005

List of Comment Letters (Attachment Numbers Noted on Documents):

1. Comments on Tentative Cease and Desist Order from Somach, Simmons & Dunn, representing Rancho Murieta Community Services District and Rancho Murieta Country Club (9-pages)

2. Comment letter from Cassidy Shimko Dawson, representing Regency Centers (8-pages)

3. Comment letter from Stanton, Kay & Watson, representing Rancho North Properties, LLC (3-pages)

4. Comment letter from Cassano Kamilos Homes supporting Regency Centers position on the Tentative Cease and Desist Order (1-page)

5. Additional comment letter from Rancho Murieta Country Club (2-pages)

SOMACH, SIMMONS & DUNN
A PROFESSIONAL CORPORATION
ATTORNEYS AT LAW

813 SIXTH STREET
THIRD FLOOR
SACRAMENTO, CA 95814-2403
(916) 446-7979
FACSIMILE (916) 446-8199
WEBSITE: www.lawssd.com

December 21, 2005

Via Facsimile and U.S Mail

Robert Schneider, Chair, and Members
Regional Water Quality Control Board
Central Valley Region
Sacramento Main Office
11020 Sun Center Drive, Suite 200
Rancho Cordova, CA 95670

Re: Comments on Second Revised Tentative Cease and Desist Order, Rancho Murieta Community Services District and Rancho Murieta Country Club, Sacramento County

Dear Chairman Schneider and Members of the Board:

This letter is submitted on behalf of Rancho Murieta Community Services District (RMCSD) and Rancho Murieta Country Club (RMCC) to provide comments on the revised Tentative Cease and Desist Order (Tentative CDO) scheduled for consideration by the Central Valley Regional Water Quality Control Board (Regional Board) on January 26/27, 2006.

RMCSD and RMCC appreciate the Regional Board's consideration of our comments on prior versions of the Tentative CDO and, in particular, the continuance of this item to the January meeting, which has allowed RMCSD and RMCC additional time to evaluate the provisions of the Tentative CDO and discuss outstanding issues with Regional Board staff. RMCSD and RMCC also appreciate staff's willingness and availability to continue to meet with us in an effort to resolve outstanding issues. We are hopeful that additional meetings will lead to further appropriate revisions to the Tentative CDO.

RMCSD and RMCC continue to maintain that a CDO is not necessary or appropriate to address the issues identified by staff. In that regard, RMCSD and RMCC incorporate herein their comment letters dated October 28, 2005 and November 21, 2005 on prior versions of the Tentative CDO.

This letter focuses on two primary remaining concerns: (1) options to address overflows and (2) the schedules for implementation of the required provisions.[1] First, the Tentative CDO requires RMCSD and RMCC to either cease recycled water lake overflows or obtain an individual NPDES permit that regulates all overflow discharges from the lakes. (Tentative CDO at p. 11.) RMCSD and RMCC continue to maintain that it is appropriate to include a third option of obtaining coverage under the General Permit for Storm Water Discharges from Small Municipal Separate Storm Sewer Systems (MS4 Permit). While staff has expressed their opinion that the current circumstances of the discharge are not appropriate for coverage under the MS4 Permit, the Tentative CDO and staff report do not describe the conditions under which coverage under the MS4 Permit is appropriate. As discussed in our November 21, 2005 comment letter, the SWRCB guidance memorandum does allow for MS4 coverage under certain circumstances. (Memorandum to Regional Board Executive Officers from Celeste Cantú regarding Incidental Runoff of Recycled Water, attached hereto as Exhibit B.) RMCSD and RMCC should at least have the opportunity to be made aware of the conditions under which MS4 Permit coverage is available and determine whether the wastewater treatment facility can be operated in a manner that would meet those conditions. The Tentative CDO precludes this option. Including MS4 Permit coverage as an option does not commit the Regional Board to granting an MS4 Permit under any circumstances. Indeed, the issuance of coverage under the MS4 Permit would be subject to a separate public hearing process. Further, RMCSD and RMCC are not asking that the Regional Board make a determination that current operations are eligible for coverage under the MS4 Permit program. RMCSD and RMCC are asking that the Regional Board identify the circumstances under which MS4 Permit coverage is available and provide RMCSD and RMCC the option to pursue MS4 Permit coverage if RMCSD, RMCC and the Regional Board determine that such coverage is appropriate.

RMCSD and RMCC also have concerns about the various deadlines in the Tentative CDO. As an initial matter, RMCSD and RMCC renew their prior comment that the deadline for RMCC to submit a technical report certifying compliance with the overflow issues should be extended to December 30, 2008. (Tentative CDO at Ordering Paragraph 3; November 21, 2005 Comment Letter at p. 4.) There are a number of complex issues associated with selection and implementation of an appropriate option to address overflow issues. In addition, the solution must be agreed to and approved by both boards of RMCC and RMCSD. Further, RMCC and RMCSD intend to develop a long-term global solution to address both overflow and capacity issues. In order to create efficiency and avoid sunk costs, RMCSD and RMCC need adequate time to select and implement a long-term global solution.

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[1] RMCSD and RMCC have several technical comments, which are set forth in Attachment A hereto.

In that regard, RMCSD and RMCC request that they be permitted to develop and provide an appropriate implementation schedule to address overflows and capacity issues in a coordinated manner, and submit that schedule at the time of identifying their selected overflow option. RMCSD and RMCC further request that the deadline to submit a Wastewater Facilities and Financing Plan be deleted and that the timeframe for developing such a plan be included in RMCSD and RMCC's proposed implementation schedule. (Tentative CDO at Ordering Paragraph 9.) Finally, as discussed, RMCSD and RMCC request that the deadline to certify compliance with the overflow option be extended to December 30, 2008.

In addition, RMCSD and RMCC request that the timeline for installation of additional monitoring wells be adjusted to provide for coordination and integration with RMCSD and RMCC's long-term strategy to address recycled water lake overflows and storage and disposal capacity. Pursuant to the Tentative CDO, RMCSD and RMCC must decide by May 30, 2006 how they will address recycled water lake overflows. (Tentative CDO at Ordering Paragraph 2.) RMCSD and RMCC must complete the identified project to address overflows by January 30, 2008. (Tentative CDO at Ordering Paragraph 4.)[2] Depending on how RMCSD and RMCC address overflows and additional capacity, additional groundwater monitoring may be appropriate. It is reasonable to integrate these long-term plans with a groundwater monitoring plan. The Tentative CDO, however, requires RMCSD and RMCC to submit a *Groundwater Monitoring Well Installation Workplan* by June 30, 2006 and complete installation of new groundwater wells by December 30, 2006. (Tentative CDO at Ordering Paragraphs 14, 15.) It will not be possible for RMCSD and RMCC to integrate the new groundwater monitoring wells with their long-term plans unless the timeline for installation of new monitoring wells is extended to coordinate with other aspects of the Tentative CDO. In that regard, RMCSD and RMCC request that we provide a schedule for installing monitoring wells at the time we identify the selected overflow option. Such an approach is reasonable and appropriate, and will provide for a more efficient and cost-effective overall monitoring program.

As a final concern, RMCSD and RMCC question the requirement to certify completion of its capacity expansion project four years before such capacity is needed. (Tentative CDO at Ordering Paragraph 12.) RMCSD will prepare a Wastewater Facilities and Financing Plan that will identify a schedule for improvements to address growth through 2019, and RMCSD will implement that plan as appropriate. It is unreasonable, however, to require construction of facilities based on anticipated growth four years later that may or may not come to fruition. RMCSD and RMCC request that Ordering Paragraph 12 instead require submittal of an Expansion Completion Report certifying compliance with the schedule in the Wastewater Facilities and Financing Plan.

[2] Again, we request that this deadline be extended to December 30, 2008.

RMCSD and RMCC appreciate your consideration of these comments and look forward to continuing to work with you and your staff to resolve the issues in the Tentative CDO. There are numerous outstanding issues that we believe can be resolved with further dialogue with Regional Board staff. We will continue to evaluate available options and share our ideas with staff. It is our desire to continue to work with staff to develop a comprehensive plan that addresses all water quality concerns, including future conditions and appropriate permitting requirements, in an efficient and cost-effective manner.

Sincerely,

Kristen T. Castaños

KTC/jlp

Attachments

cc: Mark List, Regional Water Quality Control Board (via electronic mail)
Wendy Wyels, Regional Water Quality Control Board (via electronic mail)
Frances McChesney, Regional Board Counsel (via electronic mail)
Edward Crouse, General Manager/District Engineer, Rancho Murieta Community Services District
Robert Johnson, General Manager, Rancho Murieta Country Club
Richard Brandt, McDonough, Holland and Allen
Gary Funamura, Trainor Robertson
Roberta L. Larson

ATTACHMENT A

TECHNICAL COMMENTS ON SECOND REVISED TENTATIVE CDO

Findings Paragraphs
10. RMCC not the RMCSD applied for the NPDES permit in June 2002.
32. RMCSD agreed to fund tule removal and cobble line slopes, not deepen Bass Lake

Staff Report
Page 2, Third Paragraph: RMCC submitted the technical report *In Support of a Storm Water Permit*
Page 3, Fifth Paragraph: RMCC submitted the NPDES application
Page 4, Fourth Paragraph: 2019 should be replaced by 2014
Page 5, Fifth Paragraph: RMCC on behalf of RMCSD actually removed the tules
Page 12, First Paragraph: Wastewater is treated to Tertiary standards

State Water Resources Control Board

Terry Tamminen
Secretary for
Environmental
Protection

Executive Office

Arthur G. Baggett Jr., Chair
1001 I Street • Sacramento, California 95814 • (916) 341-5615
Mailing Address: P.O. Box 100 • Sacramento, California • 95812-0100
Fax (916) 341-5621 • http://www.swrcb.ca.gov

Arnold Schwarzenegger
Governor

ATTACHMENT B

VIA EMAIL

TO: Regional Board Executive Officers

/s/

FROM: Celeste Cantú
Executive Director
EXECUTIVE OFFICE

DATE: February 24, 2004

SUBJECT: INCIDENTAL RUNOFF OF RECYCLED WATER

This memorandum transmits State Water Resources Control Board (State Board) staff recommendations regarding regulatory management of incidental runoff. Incidental runoff refers to small amounts of runoff from intended recycle water use areas, over-spray from sprinklers that drifts out of the intended use area, and overflow of ponds that contain recycled water during storms. This discussion is limited to recycled water that has received tertiary filtration for pathogen removal as specified under Title 22.

Background

The State Legislature established the California Recycled Water Task Force (Task Force) in 2001. The mission of the Task Force was to evaluate the current framework of State and local rules, regulations, ordinances, and permits to identity opportunities for and obstacles to the safe use of recycled water in California. The Task Force consisted of 40 members representing State and local regulatory agencies, water and wastewater utilities, environmental groups, and federal resource agencies. The chairman of the Task Force was Richard Katz, who is also a State Board member.

In June 2003, the Task Force completed its review and issued its final report, titled "Water Recycling 2030, Recommendations of California's Recycled Water Task Force." Recommendation 4.2.1 of the report states that the State Board should convene a committee to review the legal requirements of federal and State statutes and regulations that relate to the regulation of incidental runoff of recycled water to determine the regulatory and enforcement options that are available to the regional boards. A stakeholder committee was convened in December 2003 for this purpose. Many of the committee's recommendations are included in this memorandum.

Framework for Regulation of Incidental Runoff

The Water Code defines recycled water as "water, which, as a result of treatment, is suitable for a direct beneficial use or a controlled use that would not otherwise occur and is therefore considered a valuable resource" (Water Code section 13050(n)). A legislatively established objective is to use recycled water in place of fresh water to assist in meeting the future water requirements of the State. To implement this objective, the California Water Code has a stated goal of recycling one million acre-feet of water per year by 2010. The Water Code also states that the use of potable domestic water for non-potable uses, including, but not limited to, cemeteries, golf courses, parks, highway landscape areas, and industrial and irrigation uses, is a waste and unreasonable use of water if recycled water is available that meets specified conditions for its use.

In order to avoid nuisance problems, recycled water applied for irrigation is intended to remain on the irrigated areas. Nonetheless, while incidental runoff or over-spray of minor amounts of recycled water can be minimized, it cannot be completely prevented. Similarly, it is not possible to entirely prevent the runoff of rainwater from areas irrigated with recycled water or from decorative or storage ponds filled with recycled water, particularly during major storm events. The Task Force Report notes, however, that in some instances regional boards assume that any amount of incidental runoff requires the regional board to treat the runoff as a discharge of treated wastewater requiring an NPDES permit (referred to as the "one molecule rule").

This approach is problematic for several reasons. Most importantly, this permitting practice renders the use of recycled water undesirable for many parties. Customers are not willing to assume the cost and the potential liability associated with either securing an individual NPDES permit or ensuring that no incidental runoff will ever leave the permitted application area. Moreover, this approach does not properly acknowledge that recycled water quality is already regulated by both the regional boards and the Department of Health services, and must meet stringent requirements at the time it is applied to the site. Finally, the prohibition approach blurs the distinction between wastewater and recycled water that has been repeatedly recognized by the Legislature.

To further the goal of maximizing the use of recycled water, the water quality laws should be interpreted in a manner that is consistent with the intent of the Legislature to promote recycled water use. Consequently, incidental runoff from recycled water projects should be handled as follows:

1. Where reclamation requirements prohibit the discharge of waste to waters of the State and discharges are not expected to occur, occasional runoff should not trigger the need for either an individual NPDES permit or enforcement action.

2. If discharges from a reclamation project area occur routinely, such discharges can be regulated under a municipal storm water NPDES permit in most cases.
3. In limited cases, where necessary to address a water quality concern, discharges of recycled water to surface waters may be regulated under an individual NPDES permit. An NPDES permit, however, should not be issued unless necessary to achieve water quality objectives.

Generally, parties using reclaimed water will want to operate in such a way as to avoid the need for an individual NPDES permit. The discussion below describes the framework for regulating incidental runoff from irrigation systems and from storage ponds without issuing such a permit.

Incidental Runoff Associated with Recycled Water Irrigation

Recycled water use facilities should be designed and operated to avoid runoff to waters of the State. The regional boards should work with recycled water users to help them achieve this goal. Nonetheless, incidental runoff is likely to occur at many facilities. Consequently, regional boards should include the following language in water recycling requirements.

> The incidental discharge of recycled water to waters of the State is not a violation of these requirements if the incidental discharge does not unreasonably affect the beneficial uses of the water, and does not result in exceeding an applicable water quality objective in the receiving water."

The language is modeled after the language included in the Master Reclamation Requirements issued by the San Francisco Bay Regional Board.

Releases from Recycled Water Ponds

A principal water quality concern with recycled water ponds is the presence of locally added pollutants, such as fertilizers and algaecides. These same issues exist with potable water ponds.

Recycled water ponds should be designed and operated not to spill during dry months. Spills should be prohibited during these times. Generally, wet weather regulatory strategies that do not require individual NPDES permits fall within the following categories.

1. The recycled water pond is designed not to spill during wet months. Under this circumstance, spills that occur under extreme weather conditions or emergencies should not be considered for enforcement.
2. Recycled water ponds can be drained and refilled with potable water or flushed with potable water prior to the onset of the wet season. Flushing will not displace all of the recycled water but the water quality threat is minimal.

3. Recycled water ponds designed to spill recycled water during the wet season can be regulated under Phase I municipal storm water permits or under a general storm water permit. These permits require reduction of pollutants to the maximum extent practicable. The permits also incorporate receiving water limitations requiring the implementation of an iterative process for addressing any exceeding of water quality objectives.

Thank you for your attention to this memorandum. If you have questions, please contact me at (916) 341-5615.

A PROFESSIONAL CORPORATION

CASSIDY
SHIMKO
DAWSON
KAWAKAMI

December 21, 2005

Via Facsimile and Email

Ms. Wendy S. Wyels
Supervisor, Title 27 and WDR Units
California Regional Water Quality Control Board
Central Valley Region
11020 Sun Center Drive, #200
Rancho Cordova, CA 95670

Re: Tentative Cease and Desist Order to the Rancho Murieta Community Services District and Rancho Murieta Country Club, December 2, 2005

Dear Ms. Wyels:

This firm represents Regency Centers in connection with its proposed Murieta Gardens project in Rancho Murieta, California. This letter provides Regency Centers' comments regarding the "Tentative Cease and Desist Order to the Rancho Murieta Community Services District and Rancho Murieta Country Club", dated December 2, 2005 (the "Tentative CDO"), and regarding any decisions by the California Regional Water Quality Control Board - Central Valley Region ("Regional Board") on treatment, storage, and disposal of wastewater in Rancho Murieta.

Regency Centers owns certain property in Rancho Murieta and for the reasons explained below would be materially and adversely affected by any Regional Board decision establishing new (but unwarranted and unsupportable) requirements for the Rancho Murieta Community Services District ("RMCSD") in regard to wastewater treatment, storage or disposal. For the reasons set forth below, the Regional Board should not limit influent flows or connections to RMCSD wastewater treatment facilities. This letter incorporates by reference our previous letters of October 28 and November 21, 2005, regarding previous versions of the "Tentative Cease and Desist Order to the Rancho Murieta Community Services District and Rancho Murieta Country Club," dated October 14 and November 14, 2005. In response to our

20 CALIFORNIA ST. SUITE 500, SAN FRANCISCO, CA 94111 TELEPHONE: (415) 788-2040
FACSIMILE: (415) 788-2039

comments and comments of other interested parties, the Regional Board issued a second, revised Tentative CDO on December 2, 2005, which will be considered for approval at January 26/27, 2006 meeting of the Regional Board in Rancho Cordova.

The Tentative CDO states that the monthly average influent flow to the WWTF "shall not exceed 0.52 million gallons per day (mgd) and the total annual influent inflow shall not exceed 198 million gallons per year." The Tentative CDO also states that if RMCSD demonstrates that the excess stored wastewater has been reclaimed, thereby fully restoring the design storage and disposal capacity of the WWTF, the Executive Officer may approve the following flow limitations: a) the monthly average influent flow to the WWTF "shall not exceed 0.67 million gallons per day (mgd); and b) The total annual influent inflow shall not exceed 256 million gallons per year." (Page 12, #6.)

The latest Tentative CDO therefore, continues to impose a powerful and punitive enforcement measure, a limit on the monthly average influent flow. Such a measure, while not directly establishing a limit on water connections to the RMCSD, will establish a de facto moratorium on all development in the RMCSD coverage area. The December 2, 2005, Draft Staff Report: Cease and Desist Order ("Staff Report") does at least concede that there is a de facto limit on growth in Rancho Murieta by stating that, "The proposed flow limitation will require some curtailment of the projected residential growth rate of 60 connections per year…." (Staff Report, Page 5.) Later in the Staff Report, however, it is claimed that "The proposed Order does not impose a de facto growth limitation on development. It simply enforces an existing constraint that RMDSD apparently failed to recognize…" (Staff Report, Page 16.) Describing the limitation on inflow as "simply" enforcing an existing restraint blatantly mischaracterizes the powerful effect of influent flow limits: an indefinite prohibition of all future development in the Rancho Murieta service area.

Neither the Tentative CDO nor the latest Staff Report adequately explains why a measure as drastic as a moratorium is needed to resolve the specific carryover and winter overflow issues, nor do those documents explain why the influent limit of .67 mgd was established. The Tentative CDO, therefore, does not provide evidentiary support or valid governmental reasons justifying the adoption of a moratorium as required by the U.S.

Supreme Court. (See, *Tahoe-Sierra Preservation Council v. Tahoe Regional Planning Agency*, 535 U.S. 302, 353 (2002), *First English Evangelical Lutheran Church v. County of Los Angeles*, 482 U.S. 304, 320 (1987).) The Staff Report states that, "If RMCSD allowed discharges to increase to 1.5 mgd without making any facility improvements, then overflows would occur." (Staff Report, Page15.) No one has contended that this scenario would or should occur and the use of the 1.5 mgd figure is not a realistic consideration of the results of near term development at Rancho Murieta. Further, this statement does not acknowledge that the overflow problem is a specific issue for which specific solutions have been proposed by the RMCSD. Until issuance of this Tentative CDO, the practical and technical solutions that would resolve this situation were being discussed by the Regional Board staff and the RMCSD. However, the relation of these solutions to a long term ban on future development at Rancho Murieta was never raised. The Tentative CDO still does not provide that important, necessary nexus.

The Tentative CDO ties all future development in the Rancho Murrieta service area to resolution of the overflow issue by establishing the moratorium until "the RMCSD can (a) complete the capacity improvements sooner than required by the proposed Order, and/or (b) reclaim the excess secondary wastewater stored since 2003." (Staff Report, Page 5.) While the overflow issue needs to be resolved (a fact acknowledged by RMCSD), the wide ranging, indefinite influent flow limitation is based on an extreme interpretation of the Clean Water Act in which Rancho Murieta is being penalized for a mixture of storm water and recycled overflows in hundred year storm events. We find it troubling that the Regional Board is contemplating any enforcement action at all against RMCSD for occasional wet weather overflows of highly treated recycled water mixed with storm water from the golf course lakes. Indeed, the Central Valley Regional Board is out of step with other Regional Water Boards in California regarding the interpretation of incidental runoff as a discharge and if one examines how other states deal with this issue under the Federal Clean Water Act, it is clear that most states also view reclaimed water and wastewater as distinct from each other. Oregon, for example, does not penalize winter recycled water overflows in rainfall events larger than five year storms; Washington State law defines "reclaimed water" as "no longer considered wastewater." (Revised Code of Washington, Chapter 90.46, Sec. 90.46.010(4).)

To this point, the 2004 State Water Resources Control Board staff recommendations regarding recycled water found that it is "problematic" where regional boards treat incidental runoff as a discharge of treated wastewater requiring an NPDES permit (referred to as the "one molecule rule"). (*Incidental Runoff Of Recycled Water,* Celeste Cantú, Executive Director, February 24, 2004.) The Task Force stated that treating such runoff as a discharge is problematic because "this permitting practice renders the use of recycled water undesirable for many parties….Moreover, this approach does not properly acknowledge that recycled water quality is already regulated by both the regional boards and the Department of Health services, and this prohibition approach blurs the distinction between wastewater and recycled water that has been repeatedly recognized by the Legislature." (*Id.*, page 2; *see also* Cal. Water Code § 13576.)

Before the February 24, 2004, incidental runoff memorandum was issued, other states were surveyed regarding their approaches to regulating wet weather overflows of recycled water from ponds and lakes. There was significant variability in their approaches; some states, such as Texas, do not restrict or prohibit discharges of recycled water from ponds that occur during rain events; Florida, which has a significant level of water recycling, has identified several options for permitting wet weather overflows, depending upon the volume and frequency of overflow events, including provisions to address overflows that are "incorporated into stormwater management systems." (See, Chapter 210 of Texas Administrative Code; Florida Administrative Code, Chapter 62-610, Program Guidance Memo DOM-96-01.) If the Regional Board is intent on implementing its uncommon approach to reclaimed water, it should certainly not tie this new approach to a de facto development moratorium. Normally, when Regional Boards issue CDOs with such stringent compliance terms, they do so by at least providing a reasonable time table for implementation. None has been provided to Rancho Murieta in this Tentative CDO. Further, most Boards do not issue drastic enforcement measures, such as an indefinite moratorium, unless there is clear degradation of the water quality, such as a raw sewage spill. Again, that is not the present situation at Rancho Murieta.

Regency Centers urges the Board to consider all regulatory options for obtaining resolution of the water quality issues

addressed in the Tentative CDO. In regard to the overflow issue, the Tentative CDO only considers options that are costly and time consuming: 1) an application for and issuance of a storm water permit discharge permit under the National Pollution Discharge Elimination System (33 U.S.C. § 1342(p)) and 2) the cessation of all discharges from the overflow and golf course storage ponds. The Tentative CDO, however, does not consider the most flexible and most appropriate way to resolve the overflow issue, preparation and approval of a stormwater permit plan under a municipal separate storm sewer system ("MS4"). (40 C.F.R. §§ 122.30-122.37) The Tentative CDO should specifically include coverage under an MS4 permit as an alternative for addressing occasional wet weather overflows from the golf course lakes. Considering the use of a MS4 permit would provide the Regional Board the flexibility to identify the best solutions, quickly address the problem and be consistent with guidance from the State of California and Clean Water Act ("CWA") practices in other states. Since the CWA applies in these states as well as California, the CWA is not a barrier to an MS4 approach to any and all overflows contrary to California Sportfishing Alliance's arguments as set forth in their comments on the previous Tentative CDO.

The MS4 permit system was established and implemented by the U.S. Environmental Protection Agency precisely for such small municipal separate stormwater systems. (64 Fed. Reg. 68722 (1999).) In fact, the MS4 permit was the option that until recently was preferred by the Regional Board staff (Staff Report, Page 3.) The Regional Board staff maintained for months that the MS4 permit was the appropriate mechanism for dealing with intermittent wet weather overflows from the lakes, in accordance with the SWRCB Executive Officer's February 23, 2004, memorandum. In response to the Regional Board staff's directive, RMCSD applied for an MS4 permit to cover these overflows in September. Then, after issuing the first tentative CDO in October, the staff abruptly changed its position and now proposes that the overflows must be covered by an individual NPDES permit—a position it had previously rejected. Staff has done so without articulating either a standard for when coverage under an MS4 permit is required or citing the facts or circumstances regarding Rancho Murieta's situation that rule out this coverage. Despite the Staff Report's contentions that it is not the Regional Board's "responsibility to assess and select alternatives for compliance with applicable regulations and

policies..." (Staff Report, Page 16), the Tentative CDO does just that by not considering what may be the most appropriate administrative method of compliance, an MS4 permit.

The Tentative CDO also establishes an indefinite time period for the moratorium. The Staff Report asserts that "[o]nce the lost storage is recouped, the Executive Officer can approve increased flows up to the design storage/disposal capacity. This approach is quite reasonable and cannot be considered punitive." (Staff Report, Page 16.) The Tentative CDO, however, gives the Executive Officer complete discretion for an indefinite period of time to stop all development in the Rancho Murieta area. This approach allows the Executive Director complete discretion and unlimited time for reviewing and approving any approval of increased flows. The Tentative CDO, therefore, includes an unreasonable delay on development, one that is in contrast with the statutory time limit of 2 years for moratoria measures provided in state law for local governments. (Cal. Gov. Code § 65858.) Such discretion and unlimited time for approval is not reasonable and the Tentative CDO provides no safeguard against long delays which would in fact be punitive and damaging to Regency and other developers in the Rancho Murieta area. If the Board feels compelled to issue the CDO, it should provide an objective benchmark which automatically allows for RMCSD to increase flows instead of leaving such a decision to the unfettered discretion of the Regional Board Executive Director.

Another purported basis for the Tentative CDO's proposed moratorium on development in the Rancho Murieta service area is the existence of a settlement agreement between the City of Roseville and the Regional Board. (Staff Report, Page 3.) This settlement agreement, however, did not address the same issue at hand here - whether the Board could allow Rancho Murieta to operate under an MS4 permit. Further, Roseville does not have the larger stormwater runoff area that Rancho Murieta has, thereby necessitating larger use of storage ponds. Also, the Roseville settlement is in no way a binding precedent. While the Board certainly does not have to ignore the Roseville settlement, it should not be basing its decision regarding the Rancho Murieta storage and disposal issues on a settlement decision that has no relevance as a precedent. It seems highly unreasonable to reverse years of discussions and negotiations between the Regional Board staff and the RMCSD and establish a

wide ranging moratorium based on an irrelevant, one month-old settlement.

To the extent that there are specific carryover and winter overflow issues that need to be resolved, they are in fact short-term issues which relate to previous permits and ongoing negotiations. The resolution of those existing issues would most appropriately be addressed within the context of any past permit conditions and any negotiations between the Regional Board and the RMCSD. Establishing inflow limitations which create the conditions for a development moratorium will not resolve the existing permit and technical problems that are related to the winter overflow issues. Regency Centers and other proposed developers have not contributed to this problem and should not be forced to bear the burden created by an open-ended moratorium on development in Rancho Murieta.

In conclusion, we urge the Regional Board not to impose any limitations on sewer connections or impose any new influent flow limitations. Such requirements could force the RMCSD to enact a building ban that would cause significant and material adverse economic and environmental impacts on Regency Centers, which in our opinion, would give rise to significant legal exposures to the Regional Board. These limitations would produce economic injury to Regency Centers and potentially many other interests, including agricultural water districts, other developers and RMCSD bondholders.

If you should have any questions regarding this letter, please call the undersigned or Ed Yates at the captioned phone number.

Very truly yours,

CASSIDY, SHIMKO & DAWSON

By _____
Stephen K. Cassidy
Attorneys for Regency Centers

cc: Mark List, CVRWQCB
Anne Olson, CVRWQCB
Thomas Engberg, Regency Centers
Douglas Wiele, Foothill Partners
Scott Franklin, Regency Centers
Richard Brandt, McDonough, Holland and Allen
Kristen Castanos, Somach, Simmons and Dunn
Robert Cassano, Cassano Kamilios Homes
Clay Heil, Warmington Homes
Edward Mevi, Rancho Levi
Andrew Zinniger, Woodside Group, Inc.

LAW OFFICES OF

STANTON, KAY & WATSON, LLP

101 NEW MONTGOMERY STREET, FIFTH FLOOR
SAN FRANCISCO, CALIFORNIA 94105

TELEPHONE (415) 512-3501
FAX (415) 512-3515
WWW.SKWSF.COM

EDWARD MEVI
EdM@skwsf.com

December 21, 2005

VIA HAND DELIVERY & E-MAIL

Ms. Wendy S. Wyels
Supervisor, Title 27 and WDR Units
California Regional Water
Quality Control Board
Central Valley Region
11020 Sun Center Drive, Suite 200
Rancho Cordova, California 95670

RE: Comments on Second Revised Tentative Cease and Desist Order, Rancho Murieta Community Services District and Rancho Murieta County Club, Sacramento County

Dear Ms. Wyels:

This firm represents Rancho North Properties, LLC, a California limited liability company ("Company"). The Company owns approximately 758 acres of land at Rancho Murieta that would be affected by the revised (December 2, 2005) tentative Cease and Desist Order ("Tentative CDO").

1. The hearing should be delayed to February.

We request a delay in the hearing date from the January meeting date to the February meeting date because the time available to prepare an adequate and detailed response is so limited during the holiday season. We request the extension so we will have time to meet with staff and receive substantive input regarding potential solutions to the tasks of the Tentative CDO, such as a "purple pipe" system or other solutions for the existing treatment system.

2. The Tentative CDO should not be issued.

We support the arguments of RMCSD and RMCC and Regency Centers in connection with its proposed Murieta Gardens project in Rancho Murieta, California, that the Tentative CDO not be issued. The arguments against issuance are set forth in the letters of their counsel.

3. If the Tentative CDO is issued, the Tentative CDO should address who bears the costs of the corrective actions for the spills and the costs of increased storage and disposal capacity necessary for full build out.

The responsibility to correct the ongoing spills of the golf course lakes that would be prohibited by the Tentative CDO and are prohibited by the existing Cease and Desist Order should be borne by RMCC and RMCSD and not passed on to the developers of the remaining undeveloped land at Rancho Murieta.

Paragraph 9 of the Tentative CDO requires submission of a Wastewater Facilities and Financing Plan by January 30, 2007. The plan is to include capital cost estimates and a financing plan. The assumptions in the Tentative CDO for a full build out, for the rate of development, and for the timing of solutions to the problems raised by the Tentative CDO do not reflect the level of activity that the owners of the undeveloped land anticipate will occur. The Board should not impose these conditions in the Tentative CDO without appropriate consideration of how the Tentative CDO will impact the plans of the various landowners. As drafted, the Tentative CDO provides no equitable method for sharing the costs of construction of the improvements to the storage and disposal systems that are necessary to permit full build out.

The Rancho Murieta Planned Development Ordinance No. 77-PD-10, as amended ("Ordinance"), includes all of the developed and to be developed lands located at Rancho Murieta. We anticipate the full build out of the lands covered by the Ordinance will include approximately 4,300 residences, 234 apartments, commercial development, and a school. The Tentative CDO affects all lands covered by the Ordinance. The service area of RMCSD covers the land subject to the Ordinance.

In September of 2003, the Company and Rancho Murieta Association (a homeowners' association at Rancho Murieta) executed the Mutual Benefit Agreement. Exhibit H of the agreement provided a limitation of 1,093 (or 1,141 under certain circumstances) residences to be constructed on a portion of the land covered by the Tentative CDO. The Mutual Benefit Agreement was executed to facilitate and coordinate the development of the land subject to the Mutual Benefit Agreement in a manner that is consistent with the Ordinance. The densities agreed to under the Mutual Benefit Agreement are less than the densities permitted under existing law at that time. Of the developments covered by the Mutual Benefit Agreement, The Residences at Rancho Murieta (234) and The Retreats at Rancho Murieta (99) are included in the list of active developments at page 10 of the Staff Report. The remaining 760 residential units are allocated to the 758 acres owned by the Company.

All of the area covered by the Ordinance will be affected by the Tentative CDO. As drafted, the Tentative CDO does not reflect the landowners' plans for development. It is our

understanding that development will proceed at a rate far in excess of 60 residences per year. A rate of 200 homes per year just for the lands covered by the Mutual Benefit Agreement is a more realistic assumption. That rate does not include development in south Rancho, on the commercial site, the apartment site or school site. Without a plan for equitable sharing of the costs necessary to provide the storage and disposal capacity for all this activity, those costs will be assessed inequitably. For example, the developers first obtaining entitlements may acquire connection service within the proposed 0.67 mgd limitation, while leaving those developers not currently processing entitlements to pay for the actual costs of expanding the storage and disposal systems that will serve all new development.

We appreciate your consideration of our comments and look forward to resolving these issues.

Very truly yours,

Edward Mevi

FWT:ps
cc: ***Via Facsimile &***
First Class Mail
David R. Howard
Anne Olson
Mark List
Richard Brandt, Esq.
Steven K. Cassidy, Esq.
Robert Cassano

CASSANO KAMILOS HOMES
INCORPORATED
11249 Gold Country Blvd. Suite 190
Gold River, CA 95670
(916) 631-8500
(916) 631-8550 Fax

December 21, 2005

Via Hand Delivery

Ms. Wendy S. Wyels
Supervisor, Title 27 and WDR Units
California Regional Water Quality Control Board
Central Valley Region
11020 Sun Center Drive, #200
Rancho Cordova, CA 95670

RE: Tentative Cease and Desist Order to the Rancho Murieta Community Services District and Rancho Murieta Country Club, December 2, 2005

Dear Ms. Wyels:

As you know Cassano Kamilos Homes, Inc. is the owner of 30.2 acres of land in Rancho Murieta, California. We have a map application in process to subdivide this land into 95 single family lots. We hope to be before the Sacramento County Planning Commission by February 2006. We support the arguments of RMCSD and RMCC, Regency Centers and Rancho North Properties, LLC, that the hearing be delayed to February and that the Tentative CDO not be issued. The arguments against issuance are set forth in the letters of their counsel dated December 21, 2005.

If you should have any question regarding this letter, please call me at (916) 851-9300.

Very truly yours,

Cassano Kamilos Homes, Inc.

Robert Cassano
President

December 30, 2005

Ms. Wendy Wyels
California Regional Water Quality Control Board
Central Valley Region
Sacramento Main Office
11020 Sun Center Drive, Suite 200
Rancho Cordova, CA 95670

VIA FAX TRANSMISSION: (916) 464-4645

Re: Revised Tentative Cease and Desist Order for Rancho Murieta Community Services District and Rancho Murieta Country Club Sacramento County

Dear Ms. Wyels:

Nuisance Odors

a. By **30 March 2006**, RMCC and RMCSD shall submit a copy of the notice provided to customers regarding reporting and resolution of odor complaints.
b. By **30 April 2006**, RMCC shall submit an ***Irrigation System Odor Management Plan*** that describes in detail the operational procedures to be employed to minimize odors associated with stagnant water within the golf course sprinkler systems and all golf course ponds and lakes.
c. By **30 June 2006**, RMCC shall certify completion of the Bass Lake improvements to improve circulation and dissolved oxygen.
d. By **30 November 2006**, RMCC shall submit a ***2006 Odor Mitigation Evaluation*** that evaluates the results of the odor mitigation program to date, and if necessary, proposes additional mitigation measures to be employed in 2007.

Request for Extension

RMCC is in complete agreement with items a, b & d, but respectfully request an extension on item c; from 30 June 2006 until 31 December 2006. Due to the irrigation requirements associated with Bass Lake and other lakes on the club's property, it becomes precarious at best, to attempt any construction projects that could disrupt or prevent, in any way, the successful conveyance of

water to either of our golf courses. If this request requires further discussion, we would be available to discuss at your convenience.

Sincerely,
RANCHO MURIETA CC

Robert Johnson
General Manager

cc: Edward R. Crouse, RMCSD
Jason Brabec, HydroScience Engineers, Inc., Sacramento